

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JEREMY DIONNE SMILEY,)	
)	
Petitioner,)	
)	
v.)	CIVIL ACTION NO. 2:18-cv-396-WHA
)	(wo)
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

MEMORANDUM OPINION AND ORDER

This case is before the court on the Recommendation of the Magistrate Judge (Doc. 18) and the Petitioner's Objections thereto. (Doc. 20).

Following an independent evaluation and *de novo* review of the file in this case, the Court finds the objections to be without merit and due to be overruled.

On May 5, 2017, Smiley pled guilty to violating 18 U.S.C. § 922(g)(1) because, as a convicted felon, he possessed a firearm. On September 22, 2017, he was sentenced to 78 months in prison to run consecutively to the state sentence he was serving. On April 2, 2018, Smiley filed this § 2255 motion claiming that his former counsel, Donnie Wayne Bethel ("Bethel"), was ineffective for refusing his request to file a direct appeal on his behalf.

The Recommendation of the Magistrate Judge is that the Plaintiff's claims be dismissed.

In his objection to the Recommendation, Smiley argues that the record reflects that his trial counsel, Bethel, did not consult with Smiley about an appeal after Smiley

demonstrated that he was interested in appealing. While it is certainly the law that counsel generally must consult with the defendant about an appeal when a defendant reasonably demonstrates to counsel that he was interested in appealing, *Roe v. Flores-Ortega*, 528 U.S. 470, 480 (2000), this court agrees with the Recommendation that the record does not support a claim that Bethel did not consult with Smiley about the issue of filing an appeal. Both Bethel and Smiley indicated in their testimony at the evidentiary hearing held by the Magistrate Judge that the matter of an appeal was discussed in Smiley's phone call to Bethel. Bethel's testimony at the evidentiary hearing was that he told Smiley that this court determined that Smiley's sentence would run concurrent with his state sentence, and there was nothing that the Eleventh Circuit Court of Appeals could do about that, so they "agreed that an appeal would be fruitless and that [Bethel] will not file an appeal." (Hearing Tr. at 19). Thus, the record show that Bethel consulted with Smiley about an appeal after Smiley demonstrated that he was interested in appealing. Accordingly, it is hereby ORDERED as follows:

1. The Objections are OVERRULED.
2. The Court ADOPTS the Recommendation of the Magistrate Judge.
3. The 28 U.S.C. § 2255 motion filed by Smiley is DENIED and the case is DISMISSED with prejudice.

A separate Judgment will be entered.

Done this 23rd day of August, 2021.

/s/ W. Harold Albritton
W.HAROLD ALBRITTON
SENIOR UNITED STATES DISTRICT JUDGE